

Attachment to Independent Case Review Report
for CDRU # 588 Case File # 95-281611.

Material Examiner Malone (RO).

Remarks:

INDEPENDENT CASE REVIEW REPORT

Independent Review conducted by: Cathryn Levine

Area(s) of Expertise: Hair & Fiber

Review commenced at: 1:45pm (Time), 5/20/99 (Date)

File #: 95-281611

Laboratory #(s): 802011015 RQ YD

Examiner(s) & Symbols

| | Reviewed | Not Reviewed | | Reviewed | Not Reviewed |
|-----------|-------------------------------------|-------------------------------------|--|--------------------------|--------------------------|
| <u>RQ</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> |
| <u>YD</u> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> |
| | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> |

Materials Reviewed

Trial testimony transcript(s) of: Michael P. Malone

Testimony Date(s): no date provided Pages: 473-530

Laboratory Report(s):

Laboratory Number: 802011015 RQ YD Date: 6/9/88

Laboratory Number: _____ Date: _____

Laboratory Number: _____ Date: _____

Examiner Bench Notes of: Technician & Agent Malone

Laboratory Number: 802011015 RQ YD

Laboratory Number: _____

Laboratory Number: _____

Page 1 of 7

Initials: CL

Was any other material reviewed? ☒ Yes ☐ No

If yes, please identify and/or describe the material: Letter from County of Lee, Sheriff, Ft.

Re:

b6
b7C

Results of Review

File #: 95-281611 Item or Specimen # Reviewed: Q1-Q36, Q42-Q43,
Q56-Q57, Q59, Q63-Q69, Q71-Q83, K1 and K2

Review of Laboratory Report(s) and Bench Notes:

Note: Numbered comments are required below or on additional pages for any "No" or "Unable to Determine" Responses

- 1) Did the examiner perform the appropriate tests in a scientifically acceptable manner, based on the methods, protocols, and analytic techniques available at the time of the original examination(s)?
☐ Yes ☒ No ☐ Unable to Determine
- 2) Are the examination results set forth in the laboratory report(s) supported and adequately documented in the bench notes?
☐ Yes ☒ No ☐ Unable to Determine

Review of Testimony:

Note: Numbered comments are required below or on additional pages for any "No" or "Unable to Determine" Responses

☐ Transcript not available.

- 3) Testimony consistent with the laboratory report(s)? ☐ Yes ☒ No ☐ Unable to Determine
- 4) Testimony consistent with the bench notes? ☐ Yes ☒ No ☐ Unable to Determine
- 5) Testimony within bounds of examiner's expertise? ☐ Yes ☒ No ☐ Unable to Determine

Page 2 of 7

Initials CU

Comments

(Set forth by above question #, if applicable.
Use "Additional Comments" Sheet, if needed).

① Appropriate tests were not performed. Microspectrophotometry was ~~avail~~^{all} available to this examiner, but he did not utilize it. The brown & blue polyester and cotton fibers should have been run. The examiner states in his notes that the pink cotton was too light for microspec which maybe absolutely correct. However there is no mention as to why the brown & blue polyester AND the brown & blue cotton fibers were not run. Print-dyed materials generally have an abundance of dye to work with. Reviewer is unable to determine, for an adequate and scientifically acceptable, how comparison was conducted based on the documentation in this file. (In my opinion, it is an excusable NOT to run microspectrophotometry on these fibers.)

Review completed at: 6:00 pm (Time), 5/20/99 (Date)

Total time spent conducting review (to nearest 1/4 hour): 4 1/4 hrs.

I hereby certify that I conducted this review in an independent, unbiased manner and that the results of my review are fully documented on this report consisting of a total of _____ pages.

Cathy Levine
(Signature)

5/20/99
(Date)

Additional Comments
(Set forth by question #, if applicable)

File #: 95-281611

② The ~~the~~^{cell} results in the Report are not supported and/or adequately documented in the bench notes.

- Example - The tech notes state that 1 hair was submitted in Q168. The examiner notes regarding this same exhibit state that 2 dk. brown pubic hair fragments were recovered. Perhaps the 1 hair recovered by the technician was inadvertently broken into 2 fragments. I do not know if this ~~occurred~~^{cell} occurred - on the other explanation → there were 2 hairs present that looked as if they were one. In any event, the notes of the technician and the examiner are NOT in agreement.

There is no information in the case file as to how the identification was made on the polyester fibers in the case. Notes do not substitute IR, melting point or even microscopic exam. The case file does not contain adequate documentation to support his conclusion that these fibers are indeed polyester.

Additional Comments
(Set forth by question #, if applicable)

File #: 95-281611

③ The examiner in this case testifies as to the racial origin of these hairs - the report does not mention racial origin (although the notes do). This is not a major inconsistency but it falls within this question. Far more disturbing time is the reference to the use of the microspectrophotometer on pg. 493 of transcript which is in the part of the sworn testimony that deals with how he conducts a fiber examination. Although there is no direct statement that "I ran the microspectrophotometer on these fibers" it is alluded to by the above description of the instrumentation and again by a reference on pg. 496 of transcript that states, "they were exactly the same in all microscopic characteristics, including the printing of the colors". There are no notes on these microscopic characteristics. There is no color comparison done by microspectrophotometry. This opinion, which is expressed under oath is without scientific documentation.

④ Examiner Malone states that he examined both cut and pulled hairs in K1 sample. The technician notes state that a representative sample was mounted on 4 slides. Reviewer cannot confirm or refute this testimony based

Additional Comments
(Set forth by question #, if applicable)

File #: 95-281611

④ cont:

on the accompanying documentation
→ There are no notes associated with the analysis of the
thread in Q66. The pink cotton fiber accomp^{ed}
submitted in the same sample as the thread was
examined. The notes do not substantiate his
sworn testimony that he analyzed it (Ref: pg. 528)

⑤ The sworn testimony regarding hair probabilities was
NOT within the examiner's expertise. Agent Malme
states that the probability of having 2 known hairs
from any person's head and matching that to a hair
from another person's head is about one (1) in 5,000.
'based on his experience'. I would surmise that
Agent Malme is referring to the Canletto study - not his
own work.

Additional Comments
(Set forth by question #, if applicable)

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A question should be asked re: accuracy of the testimony or "Is the testimony with or without scientific basis"? This 1st statement is an example:

- ① - pg. 503 of sworn testimony - the minimum number of 15 characteristics is required.
- ② Also pg. 504 of sworn testimony - had only 2 occasions where I had hairs from 2 diff. people that I could not tell apart - ... from "over 10,000 known hairs". This 2nd statement could be misleading regarding the likelihood of a coincidental hair match.